



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 9, 1997

Mr. Scott A. Durfee  
General Counsel  
Office of the District Attorney  
District Attorney's Building  
201 Fannin, Suite 200  
Houston, Texas 77002-1901

OR97-2688

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111161.

The Harris County District Attorney (the "district attorney") received a request for information pertaining to a series of cases styled *The State of Texas v. George Leonard*. You state that some of the documents responsive to the request have been destroyed pursuant to a destruction order approved by the director of the State Archives Commission, and that other documents will be made available to the requestor. You assert that the remaining information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered your arguments and have reviewed the information submitted.

Initially, we note section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The district attorney received the written request for information on September 3, 1997. You did not request a decision from this office until September 29, 1997, more than ten business days after the requestor's written request. Therefore, we conclude that the district attorney failed to meeting his ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body

must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision, and generally provides a compelling reason to overcome the presumption of openness. The records submitted in Exhibit A appear to contain criminal history record information ("CHRI") obtained from the Texas Crime Information Center ("TCIC") and the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 (1990) at 10-12. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 (1990) at 10-12. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the CHRI except to another criminal justice agency for a criminal justice purpose. Gov't Code § 411.089(b)(1). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. Furthermore, any CHRI obtained from the Texas Department of Public Safety or any other criminal justice agency must be withheld as provided by Government Code chapter 411, subchapter F. The district attorney therefore must withhold any criminal history information obtained from the TCIC and NCIC or any other criminal justice agency pursuant to section 552.101 of the Government Code.

You also assert that Exhibit A contains documents that are confidential pursuant to section 18 of article 42.18 of the Code of Criminal Procedure. Section 18(a) provides:

Except as provided by Subsection (b), all information, including victim protest letters or other correspondence, victim impact statements, lists of inmates eligible for release on parole, and arrest records of inmates, obtained and maintained in connection with inmates of the institutional division subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the pardons and paroles division, or persons directly identified in any plan of release for a prisoner, is confidential and privileged.

It is not apparent that any of the submitted information in Exhibit A was obtained and maintained pursuant to the provisions of section 18(a). This provision accords confidentiality to the records of the Texas Board of Criminal Justice. *See* Open Records Decision Nos. 190 (1978) at 2 (provision makes confidential files of Board of Pardons and Paroles) (construing predecessor statute), 33 (1974). Section 18(a) does not make records in the custody of the district attorney confidential. We therefore conclude that the district

attorney may not withhold the information contained in Exhibit A based on section 552.101 of the Government Code in conjunction with section 18(a) of article 42.18 of the Code of Criminal Procedure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Michael A. Pearle".

Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 111161

Enclosures: Submitted documents

cc: Mr. Gregory W. Wiercioch  
Texas Defender Service  
412 Main, Suite 1150  
Houston, Texas 77002  
(w/o enclosures)